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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KUO FENG KO,

Plaintiff and Appellant,

v.

HOU YOU LIANG et al.,

Defendants and Respondents.

B214160

(Los Angeles County
Super. Ct. No. BC341708)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Mark V. Moony, Judge. Affirmed.

Kuo Feng Ko, in pro. per., for Plaintiff and Appellant.

Law Offices of Daniel Y.L. Wu and Daniel Y.L. Wu for Defendants and
Respondents.

Plaintiff and appellant Kuo Feng Ko (Ko or the buyer), in propria persona, appeals a judgment ordering specific performance and awarding him \$210,417 in damages, \$66,295 in attorney fees and \$36,081 in costs, which sums are to be credited against the agreed upon sale price of \$1,090,000 of the subject real property. Defendants and respondents are Hou You Liang, Mei Lan Liang, F&T Group, LLC, Up Homes, LLC, and Lester Zhou (collectively, defendants).

Although Ko substantially prevailed below, he has appealed, asserting various errors in the trial court's rulings. We reject Kuo's contentions and affirm the judgment in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

1. Pleadings.

Ko commenced this action on October 9, 2005, and filed the operative first amended complaint one month later. The pleading sought specific performance of a contract to convey real estate as well as damages for breach of written contract and fraud. The underlying contract was a new construction residential purchase agreement between Ko, as buyer, and defendants, for the sale of a house on Avenida Esplendor in Walnut, California, for the sum of \$1,090,000. Ko alleged the defendants had failed to perform and had failed to complete the project in conformity with the terms of the contract.

Thereafter, Hou You Liang and F & T Group, LLC filed a cross-complaint against Ko for rescission of contract and damages.

2. Trial; statement of decision.

The matter was tried to the court over a period of days in October 2007. The trial court awarded Ko compensatory damages for the various inadequacies in the construction of the project and also ordered specific performance of the purchase agreement, as prayed for in the complaint.

In an amended statement of decision filed June 19, 2008, the trial court ruled as follows:

Notwithstanding the numerous claims and cross-claims, this case is essentially a breach of contract claim concerning a certain real property in Walnut. Hou You Liang was the builder/seller and Ko was the purchaser. “In many respects, the home was not constructed according to plans and specifications and not in a workmanlike manner.” These defects were identified in the report of plaintiff’s expert, Aryn Siebert. The trial court found Ko met his burden of proof in establishing his breach of contract claim. The trial court found the cost of repair estimates submitted by Siebert to be appropriate and reasonable, with the following exceptions:

(1) *\$60,000 requested to replace window transom.*

The existing window transom did not conform to the plans. However, the \$60,000 cost to install the transom as called for in the plans is clearly excessive. The high cost is due to the expense of demolishing and rebuilding to install the transom. The appropriate measure of damages is the lesser of the cost of repair and the diminution of value. The only evidence of diminution of value is the amount of \$1,000.

(2) *\$10,000 requested to replace bar sink.*

The plans did not specify the size of the sink. Ko’s insistence on a larger sink was a matter of personal preference and not an appropriate cost of repair.

(3) *\$80,500 for construction of two retaining walls.*

This item was eliminated based upon the testimony of the Walnut city planner and Ko’s concession on this issue.

Thus, the court reduced Siebert’s repair estimate of \$318,113 to \$179,113, to which it added 15 percent for construction supervision, bringing the cost of repair to \$205,980, plus \$4,437 to relocate an electrical transformer, resulting in an award to Ko of \$210,417.

The trial court held Ko failed to meet his burden to establish fraud on the part of defendants, ruling Ko failed to establish that defendants did not intend to perform on the contract at the time the contract was entered into.

With respect to the cross-complaint against Ko, the trial court found in favor of Ko, ruling the cross-complainants had failed to meet their burden of proof on any of their claims.

3. *Ko's incidental damages, as determined by the trial court.*

(1) *Lost rental income.*

In addition to damages for the repair of the property, Ko sought damages for lost rental income of \$3,500 per month. The trial court found Ko had failed to support this claim, stating “[t]here is no evidence that the property could actually be rented for that amount, nor is there evidence that plaintiff ever intended to use the property for income producing property. Plaintiff submitted no evidence as to additional payments he was forced to make for housing because he was unable to occupy the residence.”

(2) *Diminished market value of Ko's existing home.*

Ko also sought \$85,000 in damages for the diminished market value of his existing home, on the theory that defendant's alleged fraud entitled him to such damages. The trial court, having determined that Ko had failed to prove his fraud claim, disallowed said item of damages. The trial court also ruled there was insufficient evidence to support Ko's opinion regarding the diminished market value of his residence.

(3) *Prejudgment interest.*

The trial court also denied Ko's request for prejudgment interest, on the ground prejudgment interest is not authorized where the amount of damages can be determined only by judicial determination of conflicting evidence. Here, the difference between the repair costs sought by Ko and the amount awarded was not a slight difference to justify an award of prejudgment interest under Civil Code section 3287, subdivision (a).

In sum, the trial court awarded Ko compensatory damages in the sum of \$210,417 for breach of contract, and ordered specific performance at the agreed upon sale price of \$1,090,000, less the total compensatory damages.

4. Award of attorney fees to Ko as prevailing party.

On June 27, 2008, the trial court heard and took under submission a motion by Ko for attorney fees and costs. The trial court ordered counsel for Ko, as the prevailing party, to submit a proposed judgment within 20 days.

Ko submitted a proposed judgment and on July 23, 2008, defendants filed objections thereto.

October 9, 2008, the trial court issued its ruling on the attorney fees motion, stating Ko was the prevailing party and entitled to reasonable attorney fees pursuant to the attorney fee provision in the parties' agreement. The trial court at that time awarded Ko attorney fees in the sum of \$59,889.

5. Proposed judgment served by defense counsel.

On November 24, 2008, given that the trial court had not signed a proposed judgment submitted by Ko, defense counsel submitted a proposed judgment and served their proposed judgment on Ko. The defendants' proposed judgment was in conformity with the rulings set forth in the amended statement of decision. As indicated, the amended statement of decision specified the compensatory damages of \$210,417 were to be applied against the agreed purchase price of \$1,090,000.

In addition, the defendants' proposed judgment provided the award of \$66,295 in attorney fees and \$36,081 in costs were to be credited against the agreed upon purchase price of \$1,090,000.

Ko did not file any objections to the form of the proposed judgment prepared by defendants.¹

¹ California Rules of Court, rule 3.1590(j) states: "Any party may, within 10 days after service of the proposed judgment, serve and file objections thereto."

6. *Judgment.*

On December 23, 2008, the trial court signed and filed the proposed judgment submitted by defense counsel. The judgment was in favor of Ko and against the defendants and cross-complainants, and provided as follows:

Ko was awarded compensatory damages of \$210,417 for breach of contract, attorney fees of \$66,295, and costs in the sum of \$36,081, all to be credited against the \$1,090,000 purchase price. Defendants were ordered to complete the sale, with escrow to close within 90 days after judgment becomes final.

7. *Notice of appeal.*

On February 11, 2009, Ko, who was now in propria persona, filed a notice of appeal from the December 23, 2008 judgment.²

8. *Postjudgment motions.*³

On January 23, 2009, Ko filed a notice of intention to move for an order setting aside the judgment, contending the judgment's directive that the award of attorney fees and costs to Ko, which sums were to be credited toward the purchase price of the subject real property, did not conform to the statement of decision.

On February 23, 2009, Ko filed a motion to be relieved from the judgment pursuant to Code of Civil Procedure section 473 as well as pursuant to the court's inherent power to vacate and correct its judgment, again arguing the judgment improperly applied the award of attorney fees and costs to Ko toward the purchase price of the property.

² In the course of this litigation, Ko had been represented by four different attorneys.

³ The postjudgment motions and rulings thereon are beyond the scope of this appeal, which is confined to the December 23, 2008 judgment. However, we briefly summarize the postjudgment events in order to flesh out the procedural history and hopefully to clarify the arguments being raised by Ko on appeal.

On February 23, 2009, Ko also filed a motion under Code of Civil Procedure section 663 to vacate the judgment and enter a different judgment, again arguing the judgment improperly credited the award of attorney fees and costs toward the purchase price, rather than ordering those monies paid directly to him.

On March 17, 2009, the trial court denied Ko's postjudgment motions attacking the judgment.

CONTENTIONS

Ko's opening brief is largely unintelligible. His chief contention, devoid of evidentiary support, is that the judgment drafted by defense counsel, which applied the award of attorney fees and costs toward the purchase price of the subject property, was procured by defendants' bribery of Ko's third and fourth attorneys.

DISCUSSION

1. Ko's contentions are patently without merit.

First, Ko contends "the judgment in favor of respondents is the only proposed judgment submitted by respondent instead of prevailing party which is caused by bribery is supported by the evidence and it is unjustified." This unsupported contention merits no discussion.

Moreover, in fact, the judgment is in favor of Ko, not in favor of the respondents. Ko clearly prevailed below. Ko, as purchaser, sued for specific performance of the residential purchase agreement. As reflected in the judgment, Ko prevailed in his action for specific performance, and also obtained a sizable award of compensatory damages as well as attorney fees and costs as the prevailing party. In addition, Ko defeated the cross-complaint which was brought against him. We recognize the judgment treats the compensatory damages, attorney fees and costs awarded to Ko as credits towards the \$1,090,000 purchase price, rather than awarding those monies directly to Ko. However, Ko did not object to the language in the proposed judgment submitted by defendants, and in any event, Ko has not shown said provision in the judgment constitutes reversible error.

Ko's next contention is that "[r]egardless of who bear[s] the blame for the creation of the illegal bribery, [a]s a result Appellant's third attorney pretended to submit the Proposed Judgment and did not submit declarations of the first and second attorneys' fees. Respondents also bribed Appellants' fourth attorney Mr. David Carroll. As a result, Appellant's fourth attorney did not submit a new different Proposed Judgment and declarations of the first and second attorney's fees in a timely manner."

Leaving aside the groundless accusations of bribery, the contention is not properly before this court. Any issues relating to the postjudgment motions to set aside the judgment are outside the scope of this appeal from the December 23, 2008 judgment. (See fn. 3, *ante*.)

Ko's next contention is "[t]he judgment in favor of respondents is unsupported by the evidence and contrary to California law." Apparently, in this section of the brief, Ko is reiterating his argument that he was entitled to recover his attorney fees and costs directly rather than by way of a credit toward the purchase price. Ko fails to cite any authority for this proposition. Moreover, Ko disregards the fact he did not object to the defendants' proposed judgment which treated the award of attorney fees and costs as a credit toward the purchase price.

Finally, Ko contends the \$1,000 award for the window transom is unsupported and the reasonable amount for the lack of the transom is \$20,000. We note at trial Ko sought \$60,000 for this item. The trial court found that figure was excessive and determined the appropriate measure of damages was diminution of value, which it assessed at \$1,000. Ko has not shown the measure of damages selected by the trial court was legally erroneous.

DISPOSITION

The December 23, 2008 judgment is affirmed in its entirety. Respondents shall recover their costs on appeal.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.